Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

**Malta - 5th Session - 2009**

6th May 2009, 2.30pm to 5.30pm

State National Report

7. The Commissioner for Children was appointed by virtue of the Commissioner for Children Act. Article 4 of this Act states that “In the exercise of the functions established under this Act, the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority”, while sub-article 1 of Article 9 (Functions of the Commissioner), states: “to promote compliance with the United Nations Convention on the Rights of the Child as ratified by Malta and with such other international treaties, conventions or agreements relating to children as are or may be ratified or otherwise acceded to by Malta.” Article 10 sets out the guiding principles that the Commissioner has to follow, while Article 11 states how the Commissioner promotes and monitors the best interests of children.

12. Malta is party to: the International Covenant on Civil and Political Rights (ICCPR), its Optional Protocol 1 and its Second Optional Protocol aiming at the abolition of the death penalty; the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of all forms of discrimination against women (CEDAW); the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol; the Convention on the Rights of the Child (CRC) and its Optional Protocol on the involvement of Children in Armed Conflict; the Rome Statute of the International Criminal Court; the Palermo Protocol – Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Convention relating to the Status of Refugees, and its Protocol; and to the UNESCO Convention against Discrimination in Education.


18. In this regard one may refer to legislation on protection against discrimination such as the Equal Opportunities (persons with Disability) Act, and the Equality for Men and Women Act, to legislation on the protection of vulnerable persons such as the Commissioner for Children Act and the Refugees Act, to legislation on the protection of privacy such as the Data Protection Act and also to more general legislation such as the European Union Act which facilitates the implementation of all European Union measures in the human rights field.

41. The Department of Social Welfare Standards has recently replaced the former Department for Social Welfare. The main functions of the new regulatory Department are to set and monitor the implementation of standards of service provision in the social welfare sector. It is also the designated "Central Authority for Child Abduction" in terms of the Child Abduction and Custody Act which was adopted by the Maltese Parliament to ratify the Hague Convention on the Civil Aspects of International Child Abduction (1980), and the European Convention on the Recognition and Enforcement of Decisions Concerning Custody and on Restoration of Custody of Children (1980). The Department liaises with numerous central authorities abroad and with local legal and court authorities to carry out this function.

43. The rights of children include those rights enunciated in the Convention on the Rights of the Child. In accordance with the “Commissioner for Children Act,” the Commissioner for Children has the power to investigate any breaches or infringements of the rights of children. The Commissioner’s functions include inter alia the promotion and support of the rights and interests of children; the promotion of the highest standards of health, education, social services, leisure, play and recreational facilities for Children; and the promotion of compliance with the United Nations Convention on the Rights of the Child.
48. The National Minimum Curriculum (NMC) entitled “Creating the Future” contains universal elements and priorities for the nurturing and development of what is truly human. One finds an emphasis on self-understanding and emotional development, and on values such as respect for differences among people. It appeals to schools to be the testing ground for Human Rights. The NMC is a significant tool for Human Rights Education. One of its major principles is the issue of inclusive education. Two of its objectives emphasise on the development of citizens and a democratic environment and the strengthening of gender equality.

49. Elements of human rights are integrated across the curriculum and are reflected in subjects like Social Studies, Personal and Social Development and European Studies. Schools are creating a democratic ethos which embodies the values of fairness, justice, equality and respect. They are embedding these principles in their school policies e.g. Anti-Bullying, Equal Opportunities, Intercultural and Anti-Racist policies. Specific human rights projects are being run in schools e.g. the Jesuit Refugee Service Outreach Project “All Equal,” Global Education Week, The World’s Children Prize for The Rights of the Child, Global Action Schools and Conectando Mundos.

51. Inclusive education programmes, special education, psycho-social services and other schemes related to disability and special individual educational needs are provided in schools for all students irrespective of race, religion or belief.

56. Sub-title VII of Title VIII of the Maltese Criminal Code also protects the right to life of the unborn child. Article 241 provides that whosoever, by any food, drink, medicine, or by violence, or by any other means whatsoever, causes the miscarriage of any woman with child, whether the woman be consenting or not, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years. The same punishment is awarded against any woman who is found guilty of procuring her own miscarriage, or who shall have consented to the use of the means by which the miscarriage is procured.

67. All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship. A person can object to be instructed in religion once he reaches the age of sixteen, and parents or guardians of a child under that age may object to the child under their care receiving any religious instruction.

75. The Malta Police Force founded in 1814 is one of the oldest Police agencies in Europe with an ad hoc code of practice outlining all the rules to prevent anything prohibited by the Constitution or any other law of Malta, setting out standards to avoid any allegations of improper treatment during arrests and giving special attention to juveniles when these are being interviewed by the Police.

104. In order to address on-going social welfare concerns and emerging needs in the area of social welfare, for the next couple of years Malta is proposing the following three over-arching policy priority objectives:

(a) Promoting the social inclusion prospects of children and young persons, through measures that target the intergenerational transmission of poverty and advance children and young persons’ personal development, well-being, rights, interests and responsibilities;

OHCHR Compilation of UN information:

2. CEDAW, CESC and CRC regretted that the respective treaties had not been incorporated into domestic law and urged the State to take all necessary action to ensure that they are fully incorporated.

7. CRC was concerned about the limitations of the Social and Family Welfare Department in performing its mandate effectively. It recommended that Malta continue to strengthen coordination of the implementation of the Convention, and take effective measures to guarantee broader representation of all actors involved. It also encouraged establishment of an independent mechanism to strengthen monitoring of the implementation of the Convention, and that the mechanism be easily accessible for children, deal with complaints in a child-friendly manner and provide effective remedies. It further suggested awareness campaigns to facilitate the effective use by children of the mechanism. CRC - 2nd to 4th reports overdue from 1997 to 2007 respectively.

15. CESC expressed concern, echoing CRC, at the distinction made between “legitimate” and “illegitimate” children in the Civil Code, and the fact that children born out of wedlock do not have the same rights as children born in wedlock. CESC urged Malta to expedite the planned revision of the Civil Code so as to abolish such terminology and ensure equality in this regard. CRC also expressed concern at alleged reports that expressions with racial connotations have been used by officials to refer to children from immigrant families in an irregular situation, recommending that Malta take effective measures to combat and prevent acts of racial discrimination against children belonging to immigrant families.

16. While noting the National Policy on Special Education for children with disabilities, CRC expressed concern at the considerable social stigma attached to such children, representing a barrier to their social integration. Concern was also expressed about limitations faced by voluntary organizations in addressing, in a comprehensive manner, all the needs of children with disabilities. It recommended that the State implement alternative measures to the institutionalization of children with disabilities; envisage awareness-raising campaigns to eliminate discrimination against them; establish special education programmes and encourage the inclusion and social reintegration of disabled children in the educational system and into society; and establish adequate monitoring of private institutions for children with disabilities.

18. CESC noted that while corporal punishment is prohibited in schools and other institutions, it is not prohibited by law in the form of
43. A 2007 UNHCR report noted that Malta's policy on detention of asylum-seekers is at times applied to vulnerable persons, namely information on measures taken or envisaged in this regard, thereby preventing children's engagement in the worst forms of child labour. Measures to encourage children to stay in school particularly during the period of compulsory education. The Committee requested in 2004 to 91.3 in 2005. The ILO Committee of Experts noted in 2007 that the CRC recommended implementing additional measures to encourage children to stay in school particularly during the period of compulsory education. The Committee requested information on measures taken or envisaged in this regard, thereby preventing children's engagement in the worst forms of child labour. A 2008 United Nations Statistics Division source indicated that the net enrolment ratio in primary education decreased from 94.7 per cent in 2004 to 91.3 in 2005. The ILO Committee of Experts noted in 2007 that the CRC recommended implementing additional measures to encourage children to stay in school particularly during the period of compulsory education. The Committee requested information on measures taken or envisaged in this regard, thereby preventing children's engagement in the worst forms of child labour. A 2007 UNHCR report noted that Malta's policy on detention of asylum-seekers is at times applied to vulnerable persons, namely
children, pregnant and lactating women, elderly persons, persons with disabilities and victims of torture/trauma. The procedure for their fast-track release often suffers from administrative hindrances, resulting in unnecessarily long detention and related negative consequences, a problem also noted by the Working Group on arbitrary detention. Whilst in detention, minors do not generally receive education and are permitted minimal time for leisure activities in the open air. Females, males and minors are accommodated in the same premises, with joint use of showers and toilets. The UNHCR report stated that medical services are not sufficient to meet all the needs, often urgent, of detained asylum-seekers, and that health risks are present. It stated that the Detention Service makes extensive use of inappropriate cells as a means of punishment, and the use of violence and offensive language, including threats is common. The report noted that UNHCR is not aware of any analysis by the Government to explore alternatives to the detention of asylum-seekers.

44. In 2005, the Special Rapporteur on the human rights of migrants transmitted allegations to the Government concerning mandatory detention for foreigners without visas. It was alleged that all such foreigners, including vulnerable persons, such as unaccompanied children and the elderly, are detained, including in camps, military barracks, or tents. There are reports of persons kept in detention for prolonged periods; overcrowding, inadequate sanitary conditions and difficulties in accessing medical care; and that armed forces and police personnel running the facilities have inadequate training. Detainees have complained about severe delays in asylum applications procedures; lack of transparency in the appeals process; failures to keep them informed of their rights and progress in their applications; and inadequate access to legal counsel. The Working Group on Arbitrary Detention also raised concerns about automatic and mandatory detention of all foreigners, and the lack of a legally binding maximum term.

48. While noting legal provisions to care for unaccompanied minors and that the residential set-up “Dar is Sliem” offers shelter and services to unaccompanied asylum-seekers under 18, CRC was concerned at the practice of automatic detention of all persons entering Malta in an irregular manner. Despite the policy that children should not be detained, the Committee was concerned that - in practice - some children and unaccompanied minors, including from countries affected by armed conflict, are detained pending finalization of the process for their release. It recommended, inter alia, that Malta identify at the earliest possible stage refugee, asylum-seeking and migrant children who may have been involved in armed conflicts; carefully examine their situation, prohibit their detention in any case and provide them with immediate, culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and social reintegration in accordance with CRC OP-AC. CRC recommended enacting legislation on asylum procedures and family reunification of refugees; continuing undertaking effective measures to provide refugee children with access to education, health services and housing; and establishing measures to assist refugee children who are victims of neglect, exploitation or abuses.

52. CRC recommended that the State ensure that training on the OP-CRC-AC is provided to the armed forces. It recommended developing systematic awareness-raising, education and training programmes on the Optional Protocol specifically addressed to all relevant groups working with and for children, particularly professionals working with asylum-seeking, refugee and migrant children entering Malta from countries affected by armed conflict.

OHCHR Summary of stakeholders’ information:

5. The Global Initiative to End All Corporal Punishment of Children (GIEACPC) noted that corporal punishment of children in Malta is lawful in the home and in alternative care settings. This is despite the recommendations of the Committee on the Rights of the Child in 2006 and the Committee on Economic, Social and Cultural Rights in 2004, who expressed concerns at the ‘reasonable chastisement’ provisions allowing corporal punishment, and who recommended explicitly to prohibit corporal punishment within the family. GIEACPC also made reference to the 2005 conclusions of the European Committee of Social Rights that Malta is not in conformity with article 17 of the European Social Charter because corporal punishment in the home is not prohibited (Conclusions XVII-I).

7. During his visit to Malta in 2003, the Commissioner noted that foreign children were being detained with their parents at closed centres. Like unaccompanied minors, though to a lesser extent, they had problems obtaining schooling. In his follow-up report on Malta (2003-2005), the Commissioner welcomed the efforts by the Maltese authorities to make schooling more readily available to the children, and in general to enable them to integrate better. He also welcomed the work being done for and with unaccompanied minors. He said it is to be hoped that the tensions over what is sometimes perceived as preferential treatment for foreign children in the school system can be quickly defused so as to avert any upsurge of racism or xenophobia.

18. The ESCR/CoE further concluded that the situation in Malta is not in conformity with Article 15§1 of the Charter on the ground that persons with disabilities are not sufficiently integrated into mainstream educational institutions and no new information has been provided to indicate that the situation has improved or that measures have been taken to address the issue.

Final Outcome:

10. The delegation cited a number of human rights institutions established in Malta to safeguard, inter alia, gender equality, equality of opportunity for persons with disabilities and the rights of children. In response to questions, it said given the various institutions, Malta has not considered it necessary to have a distinct authority to monitor human rights. It added that effective judicial procedures were preferable to a human rights institution, but that the matter was under constant review.

21. On employment, Malta believed that information and education on the minimum conditions of employment would lead to greater awareness among vulnerable groups, particularly young persons, students, apprentices and immigrants. As regards housing, the concept of sustainable neighbourhoods was being studied. Within the education sector, students are provided with individual educational needs, including the multi-disciplinary assessment of their condition. In-service training is provided to teachers and teaching assistants. Education in Malta is free, even at tertiary level, where there is also a maintenance grant to students. In response to advance questions from delegations, Malta addressed migration issues; concerns relating to gender, children and equality; legal issues and other general issues.
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28. Every effort is made to provide adequate conditions in detention, with health care being provided on the same level as for nationals including the treatment for HIV. Vulnerable migrants, including women and children, are not detained except for the period to establish their vulnerability. While unaccompanied minors are placed under a State Care Order, it was underlined that significant progress had been registered in the time lapse between referral of vulnerable cases and their release.

38. On reproductive rights, the delegation stated that the right to life is an inherent right of every human being and Malta believes this includes the unborn child, from its conception. Abortion is a direct contradiction to the right to life. According to the International Conference on Population and Development, in no case should abortion be promoted as a method of family planning. Malta agreed that action towards the fulfilment of sexual and reproductive rights should focus on the positive aspects of education, social welfare and health care.

44. Brazil recommended that Malta (a) accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and (b) strengthen efforts to submit all overdue reports to United Nations human rights treaty bodies. Concerned over the treatment of asylum-seekers and migrants, particularly vulnerable persons, such as children, pregnant women and elderly persons, and that detention periods may exceed twelve months, Brazil recommended (c) exploring alternative policies concerning asylum-seekers and considering working with UNHCR to train its professionals working with asylum-seekers. Concerning Malta’s policy on “illegal migration”, Brazil asked how considerations of national security are applied so as not to override the right to non-refoulement. While noting various legislative provisions for a refugee status determination procedure, Brazil recommended that Malta (d) consider updating its domestic law to suppress the term “prohibit immigrants” and avoid its legal consequences, particularly administrative detention, for all undocumented asylum-seekers. Brazil encouraged Malta to (e) progressively accomplish the human rights goals set forth in Human Rights Council resolution 9/12.

46. Algeria asked about measures taken with regard to the concerns of treaty bodies relating to discrimination against women, economic, social and cultural rights and the rights of the child, and the fact that treaty provisions had not been incorporated in domestic law, asking Malta to take all necessary measures to ensure that they are. Asking about the existence of follow-up mechanisms for specific human rights issues, Algeria recommended that Malta (a) study the possibility of establishing a national human rights institution to be accredited by the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights. Noting that since 2002, Malta had witnessed an influx of clandestine migrants from Africa, Algeria requested clarification on contributions that Malta might make to international and regional efforts to combat the root causes of such migration. Encouraging Malta to take a closer interest in the approach developed in the Common African Position on Migration and Development adopted by the African Union in 2006, Algeria recommended (b) that Malta consider acceding to ICRMW.

47. France, noting the importance of the issue of asylum seekers and refugees coming to Malta and the European Union, stated that a concerted response was required. France asked about plans to further strengthen existing legal arrangements against discrimination based on sexual orientation or gender identity, particularly in employment, health and education. It also sought clarification on the definition of the crime of rape in Maltese law as an attack against the peace and honour of families and against morality. France recommended (a) ratifying the Optional Protocols to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP) and the Convention on the Rights of the Child on the sale of children, child prostitution and childpornography (CRC-OP-SC); (b) providing for arrangements for same-sex couples to enjoy some of the rights and obligations enjoyed by non same-sex couples; (c) ratifying the Convention on the Rights of Persons with Disabilities and improving the integration of persons with disabilities in the education system.

48. Azerbaijan noted that, because of its geographical location, Malta faces a large number of illegal migrants and asylum seekers. Congratulating Maltese efforts to handle illegal migration, Azerbaijan called upon all relevant actors to increase their assistance to Malta. Noting the lack of mention of measures taken by Maltese authorities to combat human trafficking, Azerbaijan requested additional information on this and on measures to prevent child labour. Citing the concern expressed by the Committee of the Rights of the Child regarding the low age of criminal responsibility – nine years – of children, it recommended (a) considering raising it and (b) paying more attention to solving the issue of under-representation of women, which subsists in many fields of society, including decision-making.

50. India encouraged Malta to enact legislation fully incorporating international human rights instruments. It commended human rights education initiatives as well as the establishment of various institutions and mechanisms relating to human rights. Acknowledging Malta’s readiness to cooperate with the Special Rapporteur on migrants, India urged a review of procedural safeguards for asylum seekers, including access to legal counsel, periodic judicial review during the mandatory detention period and the fast track release procedure. Asking about the prevalence of trafficking in women and children, it asked if Malta was considering ratifying CRC-OP-SC. It sought information on the effectiveness of the national policy on special education for children with disabilities, and urged Malta to consider ratifying the Convention on the Rights of Persons with Disabilities (CPD). India encouraged the establishment of a national human rights institution in accordance with the Paris Principles.

51. Morocco congratulated Malta on its institutional structures for the promotion and the protection of human rights, particularly the establishment of the National Commission for Persons with Disabilities and the Commissioner for Children Act. Welcoming the interest shown by Malta with regard to consumer rights, Morocco recommended (a) continuing to reinforce its jurisdiction in relation to the human rights of consumers in general and more particularly that which is applicable to the tourism sector. Morocco asked about measures taken in relation to the recurrent situation of overpopulated prisons.
66. Italy noted that, while corporal punishment is prohibited in schools and in other institutions, it is not prohibited by law in the form of “reasonable chastisement” within the family. Noting the concern of the Committee on the Rights of the Child at limited measures for the rehabilitation of victims and at insufficient social awareness of the harmful consequences of ill-treatment and abuse, including sexual abuse of children, Italy recommended (a) explicitly prohibiting any kind of corporal punishment of children, including within the family, and strengthening measures to prevent and combat child abuse and ill-treatment. Commending institutional measures to promote the rights of persons with disabilities, Italy noted concerns about the social stigma attached to children with disabilities and limitations faced by voluntary organizations in addressing in a comprehensive manner all the needs of children with disabilities. Italy recommended (b) ratifying CPD and strengthening efforts to protect, in particular, children with disabilities against any form of discrimination, including by envisaging awareness-raising campaigns.

67. Slovenia noted that Malta is party to most core human rights documents, but ratified CEDAW with reservations. While commending legal efforts undertaken since ratification of the Convention, Slovenia asked if Malta intended to review and withdraw the reservations to articles 11, 14, 15 and 16 and recommended it (a) do so. It also recommended (b) ratification of the CEDAW-OP and the CRC-OP. Bearing in mind its constitutional and legal framework and its strong position on abortion, Slovenia suggested Malta consider reviewing its legislation and that exceptions be made to the general prohibition in cases of rape, incest and therapeutic abortion.

68. Noting the recommendation by the CRC regarding the training programmes on CRC-AC-OP for armed forces staff and all relevant groups working with and for children, Germany requested information on measures taken. Germany recommended (a) entirely prohibiting corporal punishment by law even in cases of so-called “reasonable chastisement” within the family; and (b) that Malta introduce an explicit prohibition by law of the recruitment of children under the age of 15 into armed forces or armed groups.

73. Belgium joined various treaty bodies’ concerns on the lack of education relating to sexuality and reproduction and asked about specific measures to strengthen such programmes. It asked about measures to improve adolescent access to advisory services, also outside of the school environment. It recommended (a) putting in place an adequate health education programme and ensuring effective access to health advisory services, notably for matters related to sexuality, sexual and reproductive rights. Regarding the rights of governmental organizations, homosexual, bisexual and transgender persons remain discriminated against in employment, provision of goods and health services and education. Belgium asked how the National Commission for the Promotion of Equality fights discrimination based on sexual orientation and if equal attention is paid to all forms of discrimination, whatever the grounds. Belgium recommended that Malta (b) do its utmost to combat all forms of discrimination, including discrimination based on sexual orientation.

76. The delegation also stressed that trafficking is an offence in Malta. The law criminalizes forced inducement, mainly using means of violence, threats or deceit to coerce prostitution. It also criminalizes international trafficking, child labour and sexual exploitation. Security personnel and social workers dealing with issues relating to trafficking of women and children have been trained in this regard. Malta was active in the preparation of the Council of Europe Convention on Action against Trafficking in Human Beings.

77. Clarifying the policy towards corporal punishment, the delegation said that concepts of lawful correction and reasonable chastisement are in no way equivalent to corporal punishment. In fact, the law recognizes even offences of small consequence as an offence of slight bodily harm. Ratification of the Optional Protocol to the Convention on the Rights of the Child was foreseen and would take place shortly, once minor amendments were made to Maltese legislation to bring it fully in line with the dictates of this instrument.
80. In the course of the discussion, the following recommendations were made to Malta:

3. Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OP-SC) (France, Slovenia, Turkey, Argentina);

21. Strengthen efforts to protect, in particular, children with disabilities against any form of discrimination, including by envisaging awareness-raising campaigns (Italy);

30. Introduce an explicit prohibition by law of the recruitment of children under the age of 15 into armed forces or armed groups (Germany); REJECTED

31. Consider raising the age of criminal responsibility (Azerbaijan);

32. Explicitly and entirely prohibit any kind of corporal punishment of children by law, even in cases of so-called “reasonable chastisement” within the family (Italy and Germany); and strengthen measures to prevent and combat child abuse and ill-treatment (Italy); REJECTED

38. Formulate a national policy on sexual education (Finland);

39. Put in place an adequate health education programme and ensure effective access to health advisory services, notably for matters related to sexuality and sexual and reproductive rights (Belgium);

45. Deal with the influx of illegal migrants, taking a fair and humane approach, and treat these immigrants and asylum seekers, particularly the most vulnerable persons -- children and pregnant women -- in the most proper manner, especially by providing them with the medical and psychological assistance that they deserve and need (Palestine);